

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN THE APPLICATION OF:

JOHN BROWSE

CASE NO.: BB1036USCNT

APPLICATION NO.: 09/219935

CONFIRMATION NO.: 4143

GROUP ART UNIT: 1638

EXAMINER: E. F. MCELWAIN

FILED: DECEMBER 23, 1998

FOR: FATTY ACID DESATURASE GENES FROM PLANTS

**REQUEST FOR RECONSIDERATION OF PETITION TO REVIVE PURSUANT TO
37 CFR §1.137(b)**

Via EFS-Web

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a Request for Reconsideration of the DISMISSAL of the Petition to Revive US Application No. 09/219,935, "FATTY ACID DESATURASE GENES FROM PLANTS" dated October 21, 2009. The petition was filed April 8, 2009, and was submitted prior to receipt of a Notice of Abandonment for failure to timely respond to the Notice of Appeal dated September 3, 2008 for the above-identified application.

The petition was dismissed because "An appeal brief was not filed in response to the Notice of Appeal filed September 3, 2008." Under 37 CFR 1.137(b) (1) a "required reply" must accompany a grantable petition.

Although an appeal brief was not filed, a request for continued examination was filed along with the petition. As noted in the MPEP 706.07(h) Request for Continued Examination (RCE) Practice 35 U.S.C. 132 Notice of rejection; reexamination:

37 CFR 1.114 Request for continued examination.

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § **1.17(e)** prior to the earliest of:

...

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 **U.S.C. 141**, or the commencement of a civil action under 35 **U.S.C. 145** or **146**, unless the appeal or civil action is terminated.

...

(d) If an applicant timely files a submission and fee set forth in § **1.17(e)**, the Office will withdraw the finality of any Office action and the submission will be entered and considered. If an applicant files a request for continued examination under this section after appeal, but prior to a decision on the appeal, it will be treated as a request to withdraw the appeal and to reopen prosecution of the application before the examiner. An appeal brief (§ **41.37** of this title) or a reply brief (§ **41.41** of this title), or related papers, will not be considered a submission under this section.

Accordingly, the filing of a request for continued examination constitutes an acceptable "required reply" under a grantable petition.

It is respectfully requested that the subject application be revived pursuant to 37 CFR §1.137(b) as a pending application.

The entire delay in filing the required reply from the due date for the reply until the filing of this petition pursuant to 37 CFR §1.137(b) was unintentional.

This petition is accompanied by the required reply namely, the previous filing of a Continuation application (US Application No. 12/420,395) along with payment of a four (4) month Extension of Time and the fee required in connection with filing of the Petition to Revive.

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Please charge the fee required in connection with the filing of this Petition to Revive, under 37 CFR §1.17(m), and any other fee that may be required in connection with the filing of this petition to Deposit Account No. 04-1928 (E. I. du Pont de Nemours and Company).

Respectfully submitted,

/Jonathon O. Narita/

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Date: December 18, 2009